MAIGALOMANIA!

THE MULTILATERAL AGREEMENT ON INVESTMENT

If ratified, the Multilateral Agreement on Investment will place yet more power and wealth in the hands of transnational corporations while making them even less accountable for their actions.

Part 1

A Briefing by
Corporate Europe Observatory (CEO) © February 1998
c/- Prinseneiland 329
1013 LP Amsterdam, The Netherlands
Telephone/Fax: +31 30 2364422
E-mail: ceo@xs4all.nl
Website: www.xs4all.nl/~ceo/

Secrecy, haste and intrigue have characterised the negotiations around the Multilateral Agreement on Investment (MAI), the latest plan of the economic globalisation elite for dismantling barriers to investment all over the world in the quest for a progressively more open, global economy.

All of the regional and global economic liberalisation pacts born in the past decade—the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), the European Union (EU), Latin America's Mercosur and so forth—will pale in the face of the mighty MAI.

"Investment is a desirable and desired thing... Nonetheless, governments still sometimes find it threatening, because free direct investment limits administrations' ability to control and shape their countries' economic destiny. This is a small price to pay for allowing private sector decision-makers to generate economic benefits worldwide. But it is a price that some governments in some sectors still find difficult to pay. That is a tragedy."[1] (European Commissioner, Sir Leon Brittan)

"The preponderance of restrictions on foreign investment lie outside the OECD area... Business needs the benefits of an international regime to include the fast-growing countries of Asia, Central and Eastern Europe and Latin America."[2] (International Chamber of Commerce, on the MAI)

CORPORATE EMPOWERMENT

An analysis of the forces behind any of the recent trade and investment regimes reveals that transnational corporations (TNCs), working both nationally and in international coalitions, are active proponents of the prying-open of markets and the removal of barriers to trade and investment. That is certainly the case in the ongoing OECD negotiations on the MAI [popularly pronounced as "my"].

A total of 477 of the world's 500 largest TNCs are based in OECD (Organization for Economic Cooperation and Development) countries, and most of these are organised in groupings like the International Chamber of Commerce (ICC), the US Council for International Business (USCIB) and the European Round Table of Industrialists (ERT).

All of these corporate lobby groups have been directly or indirectly involved in the shaping of the MAI. The reason for their interest in a global investment treaty, intended as much for Third World countries as for the OECD states negotiating the agreement, can be found in the increasing percentage of corporate investment that flows in a southerly direction.

Furthermore, TNCs are tightly allied with the neoliberal politicians governing most of their home countries, and generally play a considerable role in both national and, increasingly, international policy-making.

The 1994 completion of the Uruguay Round and the creation of the World Trade Organization were a great victory for TNCs which, together with their governments, lobbied for the removal of national barriers to the flow of goods and services.

The next logical corporate challenge has been the creation of a treaty which, by dismantling barriers to investment, would provide investors with a so-called "level playing field" across the globe.

The various provisions of this Multilateral Agreement on Investment would ensure the most ideal investment conditions for transnational corporations—including homogeneous and transparent legal and regulatory frameworks, the standardisation of diverse local and national conditions and, best of all, the right to recourse when corporate profits or reputations are damaged.

THE WINNERS AND LOSERS

The agreement will grant TNCs extensive new powers while at the same time denying governments the right to control foreign direct investment in their countries. The rules and regulations which hinder foreign investment and will be dismantled under the MAI are often those that protect workers and jobs, public welfare, domestic businesses, the environment and culture. By subverting national and local priorities to the needs of foreign investors, the MAI poses a dangerous threat to democratic political processes.

The impacts would be the most devastating on poorer countries which would have no chance to build up a balanced economy or break their reliance upon commodity export and resource extraction in the service of industrialised countries and their corporations. Consequences within OECD countries would be different but also dramatic.

THIRD WORLD UNDER SIEGE

Third World opposition to the MAI and other attempts to impose MAI-style policies has been considerable. Simultaneous to the launching of OECD MAI negotiations, the EU-led attempt at a flying start for a MAI-clone treaty, called MIA (Multilateral Investment Agreement), within the World Trade Organization was obstructed by countries like India and Malaysia. They could not, however, prevent the creation of a WTO working group on investment—in which the EU and others continue to push for the commencement of MIA negotiations.

The OECD countries have adopted a multifaceted strategy to reach their aim of investment deregulation in the South. This strategy includes tempting Third World countries to sign on to the MAI, keeping an investment treaty on the burner in the WTO, and using other international institutions like the United Nations Commission on Trade and Development (UNCTAD) and the International Monetary Fund (IMF) to further their objectives.

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The most recent offensive for investment deregulation was announced by EU Commissioner Sir Leon Brittan when, in early February of this year, he informed the world that negotiations on a trans-Atlantic free trade zone involving the EU and the US might be launched in May 1998.[3]

THE RACE AGAINST TIME

After a smooth first year and a half of negotiations, the MAI entered a far rockier phase in early 1997. Problems arose due to demands by OECD countries for an increasing number of reservations and sectoral carve-outs, and also with the high-speed emergence of anti-MAI campaigns in one OECD country after another.

Although serious preparations for the MAI had already begun in 1991, non-governmental organisations (NGOs) representing environment, development, women and other sectors which were sure to be impacted by the MAI were not consulted until October 1997.

The negotiators are now embroiled in a race against time in order to avoid another postponement of negotiation deadlines—a delay that might mean the kiss of death for the MAI. That would be a happy ending indeed for a treaty that would tie its signatory countries to the unfettered "free" global market economic model for 20 years. There would be every reason to celebrate the failure of a treaty that would increase competitive pressure on wages and policies, facilitate relocations and ban many of the policies desperately needed to strengthen local economies and reduce general dependency on transnational corporations.

OECD: MORE THAN JUST A THINK-TANK

The Organization for Economic Cooperation and Development is an intergovernmental organisation with 29 member countries. More than simply a regional body, the OECD defines itself as an "homogeneous entity" within which member countries share similar economic and political ideologies.[4] Members include all EU states plus Australia, Canada, the Czech Republic, Hungary, Iceland, Japan, Mexico, New Zealand, Norway, Poland, South Korea, Switzerland, Turkey and the United States of America.

OECD decision-making happens within a "system of consensus-building through peer pressure".[5] Essentially, this means that member countries ensure that other members stay in line with current OECD policy and direction. Much of this policy and direction is the product of various committees which seek to "knit a web of compatible policies and practices across countries that are part of an ever more globalised world".

Although often described as an intergovernmental think-tank, the OECD is more than that. Member countries send experts and policy-makers to join specialised groups and committees on approximately 200 subject areas. Such committee discussions often result in formal treaties and agreements in areas such as international investment, capital movements and environmental policy.

MAKE-UP OF THE MAI

In sum, the MAI would require countries to open their economies wide to any interested investor—and any TNC complaints about unfavourable treatment by the host country would be judged in unaccountable international courts. The main elements of the agreement are as follows:

• The MAI would encompass an extremely broad range of investments. Not only direct corporate investment but stocks, bonds, loans, debt shares, intellectual property rights, leases, mortgages and concessions on land and natural resources would be covered. The health, education, communications, cultural, banking and construction sectors would all be fair game for foreign investors. In fact, the only exempted sectors would be defence and police.

• The MAI is based on the principles of "national treatment" and "most favoured nation" (MFN). In plain language, this would require governments to treat foreign investors as well as or better than domestic investors and thus would automatically favour transnational investment over that of smaller domestic companies. Restrictions placed by countries on foreign investment in sensitive sectors—for example, publishing in Malaysia, Indonesia and Venezuela; forestry, fishing, mining and agriculture in a number of countries; toxic waste in Colombia and highly polluting industry in Taiwan—would be prohibited.

• The MAI would do away with so-called performance requirements—measures designed to protect workers and communities. For example, government requirements for a minimum number of local people being employed in a foreign firm, the use of a certain percentage of domestic products, technology transfer and so forth

would become illegal under the agreement.

• By banning restrictions on the excessive flow of capital in and out of countries, the MAI would increase speculative short-term investments of the type that caused the 1994 Mexican peso crisis and recent stock market crashes in South-East Asia.

• Unlike other multilateral treaties, the MAI would include a dispute settlement mechanism to allow investors to sue national and local governments for expropriation. This mechanism, which grants powerful TNCs the right to challenge local and national legislation emerging from democratic political processes, is an extremely dangerous political precedent. A ruling of expropriation, which the MAI defines not only as loss of income but also of reputation, requires states to compensate the investor financially and/or to reform laws. The arbitration panel would consist of a few trade experts working behind closed doors, beyond public scrutiny. The ramifications of this provision upon national environmental, health and safety regulations are enormous, as exhibited by an ongoing case under the NAFTA in which the US Ethyl Corporation is suing the Canadian Government for US$250 million, claiming lost profits and reputation due to the banning of a toxic gasoline additive.

• The MAI would in effect lock-in signatory countries for a 20-year period. A country could withdraw from the MAI only after five years, and companies investing in that country would be covered under treaty provisions for an additional 15 years.

• The MAI would also include the dangerous provisions of "standstill" and "roll-back". Standstill prohibits signatory countries from introducing new laws or policies which contradict the MAI. This provision would have a crippling effect on national environmental and social policy. Roll-back is the procedure by which countries will be forced to open up protected areas and remove laws considered in violation of the MAI. OECD countries have identified 1,000 pages of exemptions which would eventually have to be rolled back—ranging from Austria's exemption of its chimney-sweeping industry to social services in the United States.

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• The provisions of the MAI would contradict several international agreements signed by governments, including the Climate Convention and its Kyoto Protocol and the Convention on Biological Diversity.

• The MAI would be a freestanding international treaty, open to accession by non-OECD countries, which means that countries can sign on a take-it-or-leave-it basis, only allowing time-limited reservations. At least 10 non-OECD countries have expressed interest in joining the MAI from the beginning, including Argentina, Brazil, Chile and most likely Hong Kong, Colombia and the three Baltic States of Estonia, Latvia and Lithuania. Egypt is also expected to join.[6]

EXPLOSIVE GROWTH IN TNC FOREIGN INVESTMENT

Global foreign investment was at an all-time peak in both 1994 and 1995, and the 10 per cent worldwide growth in foreign investment in 1996 was also remarkable. Overall, foreign investment growth rates exceed global GNP (gross national product) growth rates (6.6 per cent per year) as well as increases in international trade levels (4.5 per cent per year).

But even the breathtaking US$349 billion total for foreign direct investment in 1996 does not capture the breadth and depth of economic globalisation. In the same year, TNCs invested a staggering US$1,400 billion in countries in which they were already represented. This development—the increased presence of TNCs in local economies as a strategy to ensure market control—has been labelled "glocalisation".[7]

There are in total some 44,000 TNCs in the world, with 280,000 subsidiaries and an annual turnover of US$7,000 billion. Two-thirds of world trade results from TNC production networks. The share of world GDP (gross domestic product) controlled by TNCs has grown from 17 per cent in the mid-1960s to 24 per cent in 1984 and almost 33 per cent in 1995.[8]

In a parallel and related process, the largest TNCs are steadily increasing their global market shares. According to UNCTAD's "World Investment Report 1997", the 10 largest TNCs now have an annual turnover of more than US$1,000 billion. Fifty-one of the world's largest economies are in fact TNCs. Continuous mergers and take-overs have created a situation in which almost every sector of the global economy is controlled by a handful of TNCs; most recently, the service and pharmaceutical sectors. In January 1998, for example, the largest business merger in history took place in a US$70 billion deal in which Glaxo Wellcome and SmithKline Beecham became the largest pharmaceutical company on Earth.

The European Union, the United States and Japan are responsible for 85 per cent of all outgoing foreign direct investment (FDI) (1996 figure). Apart from the Korean Daewoo corporation, all of the 100 largest TNCs are based in this wealthy triad. This triad has also received the bulk of FDI—nearly three-quarters in 1996. But the new trend is clear: TNCs based in the triad plan to step up their investments abroad, particularly in the Third World. More than half of all TNCs anticipate that the share of their turnover earned abroad will exceed 60 per cent before the year 2000. In 1997, only 28 per cent of the TNCs were that globally oriented.

TNCs have already indicated their favourite targets for investment. In 1996, China received one-third of all FDI in the developing world and the remaining Asian countries received approximately the same. In Latin America, Brazil led with US$9.5 billion FDI in 1996, followed by Mexico and Argentina. Africa (minus South Africa) received only US$5.3 billion that year, of which the oil-producing countries raked in 70 per cent.

THE REAL IMPACT OF GLOBALISATION

The OECD claims that economic globalisation in general, and increased foreign investment in particular, will improve living standards all over the world. However, the experiences of countries which have removed all barriers to foreign investment by joining free trade agreements are quite different. For example, since Mexico signed the NAFTA, real wages in that country have dropped 45 per cent, two million people have become unemployed, and the percentage of the population considered "extremely poor" has risen from 31 per cent in 1993 to 50 per cent today.[9] It has been demonstrated that those who suffer most from the conditions created with these free trade agreements and the consequent emergence of free trade zones are women and children.

UNCTAD's "Trade and Development Report 1997" concludes

that globalisation in its current shape is responsible for a dramatic increase in global inequality. In 1965, the average personal income in G7 (Group of Seven) industrialised countries was 20 times that in the seven poorest countries in the world; in 1995, the gap was 39 times as large. Polarisation and income inequalities are also growing: the share of income going to the top 20 per cent of the population has increased almost everywhere since the early 1980s. UNCTAD blames the liberalisation of market forces for these developments and considers the current situation inevitable until regulation of the economy is put back on the agenda.

TNCs AND THE ART OF JOB-KILLING

Although TNCs present themselves as creators of wealth and employment, the figures reveal something different. In fact, one of the main characteristics of a competitive and successful TNC is the "shedding" of jobs. Between 1993 and 1995, global turnover of the top-100 TNCs increased by more than 25 per cent, but during this same period the same companies cut 4 per cent of their global workforce of 5.8 million—over 225,000 people.[10]

TNC tendencies towards mergers, relocations, automatisation and centralisation of production and distribution are recipes for job losses. A part of the obsolete workforce might be employed by subcontractors, a "trouble-free" source of labour which TNCs increasingly make use of. Subcontractors are often skilfully played off against each other, resulting in lower prices as well as reduced wages and worsened working conditions.

Another unfortunate fact about FDI is that it very often leads to the buying up and restructuring of local companies so that they can produce more with fewer employees. Around two-thirds of all FDI in the period 1986 to 1992 consisted of mergers and take-overs.[11]

The sad truth about TNCs is that the increased growth, investment, monopolisation and concentration upon which they rely, as well as the resulting job losses and environmental degradation, are a structural characteristic of the current neoliberal economic model. However, the voices calling for a halt to this endless pursuit of deregulation are growing louder and are more often coming from unexpected sources. UNCTAD's "World Investment Report 1997" ends with a warning to world leaders that the activities and the market powers of TNCs can in fact undermine the health of the global economy.

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GROUNDWORK ON THE MAI NEGOTIATIONS

Although preparations for the MAI have been underway for close to a decade, official negotiations started only in 1995 and the first draft treaty was not ready until January 1997. Whereas negotiations had until this time been a relatively harmonious process involving negotiators from the most neoliberal branches of national governments and corporate lobby groups, the past year has been full of unexpected pitfalls. The combined impacts of conflicts between OECD countries and increasing environmental and trade union opposition have turned the negotiations into a high-speed race towards the finish line.

Talks about something resembling a MAI within the OECD were launched as long ago as 1988, when its investment committee began working to convert existing non-binding OECD agreements—particularly the rules concerning national treatment for foreign investors—into binding ones. Negotiations lasted for two years but then came to a halt.

The formal reason for the discontinuation was the United States' refusal to give Canada an exemption on national treatment for culture. The underlying motive, however, was the ambition of some negotiating parties, particularly the US, to start negotiations on a more comprehensive agreement on liberalising investment flows.[12]

The next year, in 1991, the OECD Ministerial Conference ordered a study into the feasibility of a multilateral framework for investment. The work was initially carried out by two OECD working groups: the Committee on International Investment and Multinational Enterprises (CIME) and the Committee on Capital Movements and Invisible Transactions (CMIT).[13]

This work was accelerated in 1994, when five working groups "composed of independent governmental experts were set up to prepare the major elements in the MAI".[14] During this preparatory phase, business interests were systematically consulted. Collaboration existed not only with the OECD's Business and Industry Advisory Council (BIAC), which unites numerous business associations and has formal consultative status at the OECD, but also with individual corporate lobby groups such as the ICC.

At their May 1995 conference, the OECD country ministers decided to initiate negotiations on a MAI, with the goal of completing an agreement by May 1997. The OECD countries made no secret of their intentions to negotiate a treaty with the "highest standards" of protections and rights for foreign investors, only afterwards inviting non-OECD countries, mainly in the Third World, to join. The process of soliciting non-EU members started soon afterwards, in the first of a series of ongoing negotiations with interested countries.[15]

NGO observers following the negotiations between the EU and the ACP (African, Caribbean and Pacific) countries about a revised Lome Convention[16] report that the EU is pressuring these former European colonies to accept the MAI as part of a new Convention.[17]

From the outset, the MAI was also intended to prepare the ground for a global investment treaty within the World Trade Organization.[18]

The main building blocks of the MAI as we know it—including its all-encompassing definition of investment and the principles of national treatment, roll-back, standstill and so forth—were in place from the start of the negotiations, thanks to the four-year feasibility study.

Official negotiations kicked off in September 1995 in a negotiating group chaired by Dutchman F. A. Engering, with representatives of all OECD states as well as the European Commission. The WTO was invited as an observer.

Since that time, this negotiating group has met every four to six weeks, and working or drafting groups convene more frequently. Between meetings, delegates circulate texts and positions through electronic mail.[19]

COSY CONSULTATIONS WITH BIG BUSINESS

Business has had direct input in the MAI framework throughout the entire negotiation process. Apart from the formal consultations carried out by the negotiating group with both the BIAC and

Trade Union Advisory Committee (TUAC), an "ad hoc group of BIAC experts...meets with and advises OECD negotiators prior to each negotiation session".[20] The negotiators have made extensive use of the "expertise" of the ICC, for instance, in shaping the dispute settlement mechanism. In fact, the ICC's own court of arbitration is one of the three possible bodies to which corporations can turn for dispute settlement purposes.[21]

No less important than these direct injections into the OECD process is the lobbying done by industry on the national level. For example, USCIB has "regular meetings with US negotiators immediately before and after each MAI negotiating session".[22] Similar close cooperation between industrialists and national negotiators has taken place in many other OECD countries, including Canada and the Netherlands. The pressure by the Dutch negotiators on the US to withdraw its reservation on research and development (R&D) subsidies was a direct result of lobbying from Netherlands-based TNC, Philips. Philips wanted to ensure its access to R&D subsidies in the US.[23]

Corporate lobby groups like the ICC and the ERT have used their political access at the highest political levels—including summits of global importance, such as the G7—to stress the need for a speedy completion of the MAI and for keeping the agenda clear of labour and environmental demands.

The basis for the cosy consultations between governments and corporate lobby groups throughout the MAI drafting process is that the business agenda is wholeheartedly embraced by several of the most influential negotiating delegations. The ICC's April 1996 "Multilateral Rules for Investment" report leaves no doubt about the almost complete consensus between the MAI negotiators and industry.[24] The rules proposed in the report are basically identical to the first MAI draft that was completed nine months later.

The first draft of the MAI saw the light of day in early 1997. Until this time, the agreement had been sailing along quite smoothly, with the general public and even most elected public officials oblivious to its very existence.

Generally, economic or trade ministry officials represent their countries in the MAI negotiations in the OECD. In the Netherlands, the traditionally close connections between industry and economic and trade ministries have been exploited to their full potential. The Dutch negotiators sided with industry in their mutual aim to get "as many obstacles as possible to foreign investment removed".[25] Secretary of State for Economic Affairs Van Dok-van Weelen reported to the Dutch Parliament in November 1995 that national treatment should also apply to "issues like public procurement and the granting of all kinds of subsidies and guarantees".[26] In many countries, the MAI went largely unnoticed by other ministries, e.g., those of environment, social affairs and culture, until a very late stage.

"RESERVATIONS" ON BOTH SIDES

The first draft of the MAI saw the light of day in early 1997. Until this time, the agreement had been sailing along quite smoothly, with the general public and even most elected public officials oblivious to its very existence.

But both the complicated reservation process and the discovery of the MAI process by the NGO community have served to slow down and perhaps even fundamentally disrupt the charted course of the planned agreement.

Governments submitted their "reservations" to the MAI in February 1997, and, in addition to the sheer volume of national exceptions, governments chose to exempt some core, open-ended areas of the agreement. In some countries, the exemption process probably involved government representatives who had previously been uninformed about the MAI and were now reacting with cold feet to the far-reaching provisions of the agreement.

Some of the major core exemptions proposed by member states are:

- The US demanded an exemption for sub-federal law, which would provide states and localities with immunity from the MAI.
- The EU asked for positive discrimination for investment within regional economic integration organisations (REIOs) like itself. The aim of this clause is to ensure that the MAI would not prevent countries from changing their laws to match EU legislation. This could be of crucial importance for Central and Eastern European countries waiting for EU membership as well as for the future possibilities of harmonising EU legislation.
- France and Canada requested that culture be carved out of the agreement entirely.
- The EU made noise about the need to ban secondary boycotts, such as the US Helms-Burton Act which penalises companies doing business with Cuba.
- Many governments discouraged the proposed ban on the use of tax measures which could, for example, favour domestic or smaller enterprises.

To add insult to injury, country-specific exemptions to the MAI now total a hefty 1,000 pages, with some governments exempting page after page of the key sectors of their economies.[27]

The serious impacts upon the treaty of these far-reaching reservations, such as culture, and the daunting volume of the specific exemptions have served to unsettle the previously trouble-free MAI negotiations.

A decision to postpone the deadline for the negotiations until May 1998 was taken at the May 1997 OECD Ministerial Conference, with ministers arguing that a "high standard" MAI required more time.

EXPLOSIVE PUBLIC REACTION

The second and simultaneous spanner in the MAI's works was the explosive reaction of the international NGO community after a draft text of the MAI was leaked at the beginning of 1997. Canadian and US NGOs were quick to put the draft text on their websites, and campaigning spread like wildfire to other parts of the world.

NGO strategies have included public education, lobbying of government officials and parliamentarians (many of whom first heard about the MAI from the NGO community), and, in October 1997, the organisation of a global NGO strategy meeting on the MAI and a simultaneous informal consultation with the OECD. The consultation/strategy session brought together representatives of development, environmental and consumer groups from over 70 countries and resulted in a call for a major overhaul of the agreement.[28]

NGOs and trade unions have successfully injected two new demands into MAI negotiations: the integration of labour and environmental standards in the agreement. For industry, these demands, taken in conjunction with the cumbersome reservation process, are intolerable.

Recently, the OECD's Business and Industry Advisory Council began a new offensive after realising that its dream MAI was on the verge of being derailed. At an official consultation between BIAC and the OECD's MAI negotiating group in January this year, industrialists expressed concerns about the direction the discussions were taking. Herman van Karnebeek, Chairman of BIAC's Committee on Multinational Enterprises (as well as of chemical giant AKZO Nobel and the Dutch branch of the ICC), complained: "We now hear of disturbing signs that many of the elements we were hoping for may not be possible. What then, we are beginning to ask ourselves, is in the MAI for us?"[29]

Some BIAC members, particularly annoyed at the carve-out of taxation and the introduction of labour and environment standards, went so far as to threaten that business might withdraw its support for a sub-standard MAI, which would make ratification difficult in many countries. OECD negotiators calmed members' fears by asserting that liberalisation remained at the top of their agenda, but that compromises were necessary in order to complete the MAI by April 1998. "Remember, this is only the first step—like the GATT in 1947," BIAC was consoled by an OECD official. "We are entering a process of historic dimensions."[30]

BIAC: BUSINESS BEHIND THE SCENES

The Business and Industry Advisory Committee (BIAC) is the official voice of business in the OECD's MAI negotiations. Based in Paris and established in 1962 like the OECD itself, BIAC is regularly consulted by the OECD both formally and informally.

BIAC consists of the employers' organisations of OECD member countries as well as industrial lobby groups like UNICE (the Union of Industrial and Employers' Confederations of Europe), Canada's Business Council on National Issues (BNCI), USCIB, the ICC, the World Business Council for Sustainable Development (WBCSD) and others. Some individual corporations including Shell, General Electric, BASF and Kobe Steel are also represented. BIAC is organised into 14 committees which work on issues ranging from trade, education and chemicals to international investment.

And with its far less subtle approach, the IMF continues to use every opportunity to impose MAI-like rules on countries in financial crisis.

BIAC has been an enthusiastic supporter of the MAI from the beginning of the negotiation process and was actively involved in pre-negotiation work between 1991 and 1995. There have been a number of formal consultations between BIAC and the negotiation group, but perhaps more significant has been the work done behind the scenes. For example, an ad hoc group of BIAC representatives meets informally with the OECD negotiators prior to each negotiating session.[31]

TRADE UNION ADVISORY COMMITTEE (TUAC)

Like its corporate counterpart, the Trade Union Advisory Committee (TUAC) has consultative status within the OECD and has a small secretariat in Paris. It represents over 55 trade union organisations in the industrialised world and counts a total membership of 70 million workers.

TUAC sees its role as "ensuring that global markets are balanced by an effective social dimension".[32] Accordingly, TUAC has stressed the need for binding social and environmental standards in the MAI since consultations during the feasibility studies in the early 1990s.[33] Although OECD negotiators have never taken these recommendations seriously, Roy Jones of the TUAC Secretariat points out that the recent difficulties in the negotiations show that TUAC is right: "labour and environment can blow the treaty apart".[34]

MAI AND THE EUROPEAN UNION

In addition to the 29 OECD countries, the European Commission has been represented as the 30th negotiator throughout the MAI negotiations. Although the legal status of the Commission's role is unclear, the MAI is being treated as a matter of shared responsibility between the European Commission and the member states.[35] In contrast, the Commission negotiates on behalf of the 15 member states in the World Trade Organization, a result of paragraph 113 in the Maastricht Treaty which gives the EU competence over a major part of the external trade policies of its member states. Although shared responsibility allows the Commission to play an influential role in the negotiations, it also means that the MAI will have to be ratified by the Council of Ministers.

Overall, the Commission has played an increasingly important role in coordinating EU member-state positions as the MAI negotiations have proceeded. This might be attributed to the ambitious leadership in the negotiations by Sir Leon Brittan, of Directorate General 1 (External Economic Relations)—a man well known for his aggressive, competitive approach to trade and investment matters. The EU is simultaneously pushing for a mechanism for investment liberalisation both within the OECD negotiations and the WTO. As Sir Leon Brittan said: "We need to tear down existing obstacles to investment and stop new hurdles being thrown up in its way. Nothing short of a comprehensive set of binding international rules will create the level playing field which is so vital for the European economy."[36]

MAI AND THE EUROPEAN PARLIAMENT

To date, the European Parliament has been granted no formal role in the MAI negotiations, nor does it have the legal right to ratify or reject the agreement. However, on its own initiative, the Parliament has brought out a resolution on the MAI for discussion in February and most likely a vote in March 1998.

The first draft of the resolution, written by German Green MEP Kreissl-Doerfler, is highly critical of both the MAI and the negotiating process, and stresses "the fact that the negotiations have hitherto been conducted in utmost secrecy, with even the parliaments being excluded".[37]

The draft resolution states that the MAI "reflects an imbalance between the rights and obligations of investors, guaranteeing the latter full rights and protection, while the signatory states are taking on burdensome obligations which might leave their populations unprotected". The resolution demands that binding social and environmental standards be included in the MAI, as well as a guarantee that the MAI will not lead to competition on rules in order to attract foreign investment.[38]

In addition, the so-called regional economic integration organisation (REIO) clause is a high priority for the European

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Parliament which fears that the enlargement of the EU to Central and Eastern Europe—which will involve changes in legislation and future social and environmental policies at the EU level—are threatened by the MAI. These fears are mostly based on the most favoured nation and standstill clauses in the MAI.

The Parliament's draft resolution on the MAI ends by calling on "the parliaments and the governments of the member states not to sign the MAI until a thorough analysis, accessible to the public, has been carried out of the impact of this agreement on legislation within the EU". The European Commission, however, is under no obligation to fulfil this request. The European Parliament has demanded the right to ratify the agreement, but it remains unclear whether or not the Council of Ministers will heed this request.

THE INTERNATIONAL PUSH FOR INVESTMENT DEREGULATION

As has already been indicated throughout this briefing, the MAI is not the only ambitious attempt to deregulate investment rules. Since 1995, governments all over the world have made some 600 changes in national investment legislation, 95 per cent of which have resulted in greater liberalisation. Over the past five years, the number of bilateral investment treaties has tripled to reach a current grand total of 1,330 agreements involving 162 countries.[39] The following is an overview of the multifaceted push for investment deregulation that has been launched by OECD countries.

Over and above the MAI, the EU, the United States and Japan dream of a global investment treaty within the WTO. Attempts to initiate negotiations on such a treaty—stimulated by the euphoria that followed the GATT signing—took place in 1995 and 1996.

Fierce Third World resistance to the so-called MIA (Multilateral Investment Agreement) resulted in a compromise: the creation of a WTO working group on investment—within which the struggle continues.

UNCTAD, another increasingly outspoken proponent of deregulation, plays a crucial role in moving Third World countries towards more neoliberal positions on investment, for instance by providing consensus-building conferences.

And with its far less subtle approach, the IMF continues to use every opportunity to impose MAI-like rules on countries in financial crisis.

Activities on another front are likely to be stepped up in the coming months—a trans-Atlantic free trade zone, including full-scale investment deregulation, between the EU and the US. Preparations have been underway for several years between the US Government, the European Commission and corporate leaders in the Trans-Atlantic Business Dialogue (TABD). In early February, EU Commission Vice-President Brittan announced that the aim is to start negotiations at the EU-US Summit in May 1998—another path leading to the same goal, and with the same fundamental lack of public consultation let alone a public mandate.[40]

MAI OR MIA: A TWO-TRACK INVESTMENT STRATEGY

The year 1995 was big for investment negotiations. Not only did MAI negotiations officially begin, but the OECD ministerial meeting in June of that year also agreed to push simultaneously for an MIA

within the WTO.[41] Although there was general consensus on the desirability of a two-track strategy, the European Union was probably the strongest proponent of taking the fast-track approach with the WTO treaty.[42] As European Commissioner Sir Leon Brittan put it: "I believe that developing countries have never been as receptive as they are today to the message that foreign direct investment is not a threat but a positive tool for economic growth... At a time when over half of new investment flows go to the developing world, this is a global issue that OECD countries cannot resolve alone... We must get the issue into WTO..."[43]

The original idea was to launch negotiations on an MIA at the December 1996 WTO ministerial conference in Singapore. The proposal for an MIA outlined in a 1995 European Commission paper, "A Level Playing Field for Direct Investment Worldwide", closely resembled the MAI.[44] This MIA would grant foreign investors the rights of entry, establishment and national treatment in all sectors in all WTO member countries, would guarantee unrestricted capital and profit flows, and would require restructuring of tax and company laws.

What makes an investment treaty within the WTO attractive to Northern governments is that it would allow access to the WTO's dispute settlement mechanism—and especially to its cross-retaliation provisions which are a very powerful juridical instrument involving trade sanctions against non-compliant countries. Influential corporate lobby groups, in particular the European Round Table of Industrialists, have pressured for such a "GATT for investment" since the early 1990s.[45]

To be continued next issue...

Endnotes

1. European Commission Press Release, "Commission Launches Discussion Paper on Worldwide Investment Rules", IP/95/52, 19 January 1995.
2. ICC report, "Multilateral Rules for Investment", 30 April 1996.
3. *Financial Times*, London, 2 February 1998.
4. OECD website, http://www.oecd.org/
5. Ibid.
6. Interview with Jan Huner, deputy of Mr Engering, head of the MAI negotiations, 28 January 1998. Huner did not mention Slovakia, which has previously often been mentioned as a candidate.
7. For an extensive overview of "glocalisation" and other new corporate market strategies, see the article, "Who Competes? Changing Landscapes of Corporate Control", by Nicholas Hildyard, Colin Hines and Tim Lang in *The Ecologist*, vol. 26, no. 4, July-August 1996.
8. Based on UNCTAD figures; see *Third World Resurgence*, no. 79, p. 18.
9. Testimony by Lori Wallach, public citizen, before the US Congress International Trade Commission, 15 May 1997.
10. UNCTAD, "World Investment Report 1997".
11. Dr P. Schuurman and Dr J. P. Huner, "International Investments", discussion paper for the Directorate General for Foreign Economic Relations, The Hague, February 1996.
12. Interview with Jan Huner, OECD, 28 January 1998.
13. William H. Witherell, Director for Financial, Fiscal and Enterprise Affairs at the OECD, in "The OECD Multilateral Agreement on Investment", *Transnational Corporations*, vol. 4, no. 2, August 1995, p. 8.
14. Idem. "These groups dealt, respectively, with liberalisation obligations under existing OECD instruments, liberalisation obligations in new areas, investment protection, dispute settlement and the involvement of non-members and institutional matters."
15. Witherell, ibid., p. 12. The bulk of these consultations were with the members of the OECD's advisory group on investment, which includes the Central and Eastern European countries, and in "policy dialogue workshops" with South-East Asian and Latin American countries.
16. Under the 1975 Lome Convention, the 70 ACP countries were allowed duty-free exports into the EU as a form of aid. The Lome Convention is being renegotiated.
17. This was reported to have happened at, for instance, the meeting between EU and ACP countries in Kampala, Uganda, in October 1997. Roberto Bissio in *Third World Network Features*, 1680/97, p. 3.
18. The Dutch OECD negotiators wrote in their first report to the Dutch Parliament: "...the function of the treaty that will be agreed upon in the OECD framework is precisely to give the other WTO countries an idea of

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what kind of elements a multilateral policy framework contains. The MAI therefore fulfils a catalysing role in the further development of policy consensus in this field." See Secretary of State for Economic Affairs Van Dok-van Weelen's first report on the MAI to the Dutch Parliament, "De onderhandelingen binnen de OESO inzake een Multilateraal Akkoord over investeringen", 2 November 1995.
19. Frans Engering, "The Multilateral Investment Agreement", in *Transnational Corporations*, vol. 5, no. 3, December 1996.
20. USCIB Investment Committee, USCIB website.
21. Cases would be facilitated by the International Chamber of Commerce's Court of Arbitration, the World Bank's International Center for the Settlement of Investment Disputes (ICSID) or the UNCITRAL rules (UNCITRAL is a UN agency which has developed rules for arbitration in international commercial disputes).
22. USCIB website.
23. Confidential official source.
24. ICC Commission on International Trade and Investment Policy, Document n.103/179 Rev., 30 April 1996.
25. Report to the Dutch Parliament by Secretary of State for Economic Affairs Van Dok-van Weelen, 2 November 1995, p. 4 (our translation) (see endnote 18).
26. Idem.
27. This is according to Dutch negotiator Marinus Sikkel at a public hearing on the MAI in Utrecht, the Netherlands, 3 February 1998.
28. NGOs called for the suspension of negotiations to allow for public participation in the negotiations: "...an independent and comprehensive assessment of the social, environmental and development impact of the MAI with full public participation, the observation of binding environment, labour, health, safety and human rights standards, the elimination of the investor state dispute settlement mechanism as well as the expropriation provision of the MAI and the renegotiation of the terms of withdrawal."
29. Chairman's Opening Remarks, 15 January 1998.
30. BIAC consultation, 15 January 1998.
31. USCIB web page.
32. TUAC web page.
33. TUAC's concrete demands are the incorporation of the OECD Guidelines for Multinational Enterprises into the MAI, a structure to ensure the implementation of the guidelines, the commitment to enforce basic workers' rights, and the provision that foreign investment must not violate domestic or internationally recognised labour standards. See "The Multilateral Agreement on Investment: Key Issues for Trade Unions", TUAC Briefing Note for Affiliates, September 1997.
34. Interview with Roy Jones, TUAC Secretariat, 26 January 1998.
35. This shared responsibility is not clearly defined in any EU treaty, but is based on a decision by the European Court of Justice on the Uruguay Round of the GATT. MEPs have asked the Commission about this shared responsibility and have received vague responses.
36. Sir Leon Brittan in a speech on investment at a conference organised by the Royal Institute for International Affairs (Chatham House) and the London School of Economics, quoted in an EC press release, "Commission Calls on European Business to Intensify Worldwide Investment Efforts", IP/95/269, 17 March 1995.
37. Committee of External Economic Relations, "Draft Report on the Negotiations in the Framework of the OECD on a Multilateral Agreement on Investment (MAI)", 17 December 1997.
38. "Competition on rules" refers to steps that governments take to attract foreign investors, and may include relaxing environmental and social regulations, tax breaks, the establishment of free trade zones and so forth.
39. UNCTAD, "World Investment Report 1997".
40. *Financial Times*, London, 2 February 1998
41. This consensus was confirmed at several 1995 summits, including the Halifax G7 Summit in June and the Trans-Atlantic Summit between the EU and US in December.
42. EU Commissioner Sir Leon Brittan explained the two-track strategy as follows: "We must tell our non-OECD partners in the WTO what we are doing among ourselves, overcome their fears that an investment initiative goes against their interests, and prepare the ground for decisions in the inaugural WTO ministerial in the autumn of 1996. By then, the OECD will be nearing the end of a planned two-year negotiation: WTO will be well placed to consider a complementary negotiating mandate to free investment flows worldwide." Source: see endnote 36.
43. Taken from a speech by Sir Leon Brittan at the Stockholm Trade Policy Seminar, 23 October 1995.
44. Martin Khor in *Third World Network Features,* 1409/96.
45. For instance, see "European Industry: A Partner for the Developing World. Foreign Direct Investment as a Tool for Economic Development and Cooperation: Suggestions for Future Improvement", ERT, 1993, p. 35.

About the Author:
Corporate Europe Observatory (CEO) is an Amsterdam-based non-profit organisation set up to monitor and report on the political activities of European corporations and their lobby groups.